WILLIAM A. CASSIDY

(b)(6)
[redacted]

SUMMARY/ACCOMPLISHMENTS:

- *Motivated, energetic, self-starter* with 35-year record of achievement.
- *In-depth knowledge and unique and distinguished experience* in all aspects of Immigration Law.
- *Articulate and persuasive* in written and verbal communication with staff and professional peers.
- *Proven ability* as an independent problem-solver, negotiator and in follow-through to meet deadlines.

EDUCATION:

Cleveland Marshall College of Law
Cleveland, Ohio
Juris Doctor, August 1980

Kenyon College
Gambier, Ohio
B.S. Political Science
May 1975

PROFESSIONAL EXPERIENCE:

IMMIGRATION JUDGE
Executive Office of Immigration Review (EOIR)
U.S. Department of Justice
1995 – Present: Atlanta, GA
October 1993 – 1995: New York, NY
Duties: In removal proceedings, determine whether an individual from a foreign county (an alien) should be allowed to enter or remain in the U.S. or should be removed. Responsible for conducting formal court proceedings; Jurisdiction to consider various forms of relief from removal; make decisions for removal (formerly called deportable) or inadmissible under the law; Make considerations for accepting voluntary departure (alien avoiding removal); Make decisions regarding requests for asylum, cancellation of removal, adjustment of status, protection under the United Nations Convention Against Torture, or other forms of relief.

OF COUNSEL, SQUIRE, SANDERS & DEMPSEY

Labor Department with emphasis on Immigration Law

April 1992 – October 1993: Cleveland, Ohio

Duties: Advise Corporation on matters involving immigration: Transfer and Travel of Foreign and U.S. Executives, Managers, and Professionals, Immigrant and Non-immigrant Visas, Re-entry Permits, Waivers of Excludability, Work Authorization and Employee-based Visas, Labor Certification, Advance Parole, Change and adjustment of Status, Visa processing at U.S. Consulates and Embassies, Unfair Immigration-related Employment Practices and Employer Sanctions, Asylum and Citizenship.

Accomplishments:

- Member of American Immigration Lawyers Association Liaison
- Committee to the Executive Office for Immigration Review
- Prepared Business Development Brochure on Immigration Services
- Provided immigration counsel to corporate clients.

ASSISTANT GENERAL COUNSEL, DIRECTOR OF TRAINING

U.S. Immigration & Naturalization service (INS)

June 1991 – April 1992: Washington, DC (GS-15)

Duties: Determine curriculum for Office of the General Counsel training conferences, oversee the preparation of professional development and training methodology documentation, and selection of instructors for training programs. Assist with the development of standardized training programs provided to INS Agents, Inspectors, Examiners and Border Patrol Agents at the Federal Law Enforcement Training Centers at Glynco, Georgia and Artesia, New Mexico.

Accomplishments:

- Coordinated Training Conference for District Counsels Conference (11/91)
- Coordinated New Attorney Training conferences (1/92)
- Contributory Editor of the New Attorney Trial Manual (1/92)
- Authored and developed a training video for the New Asylum Officers (2/92)

GENERAL ATTORNEY

Department of Justice Litigation and Legal Advice Section, U.S. Immigration & Naturalization Service

Cleveland, Ohio: July 1987 – June 1991

Duties: Advise District Director and operating units (adjudications, exams and enforcement). Designated FOIA, EEOC and IRCA Sanctions Attorney. Instructor: Federal Law Enforcement Training Center; Represent INS in Visa, Naturalization, Deportation and Exclusion proceedings at hearings and on appeal. Promoted to GS14 (1988).

Accomplishments:

- Received outstanding performance evaluation - (July 1988, July 1989, July 1990, July 1991).
- Special Achievement Award (February 1991).
- Trial Attorney of the Year (July 1990).
- Appointed to the National Employer Sanctions Legal Advisory Committee.
- Developed, implemented and provided Agent and Attorney training on Immigration Reform and Control Act (IRCA) enforcement procedures.
- Negotiated settlements on over 250 IRCA cases (leader in Northern Region).
- Assisted in the preparation of the IRCA Litigation Handbook for INS attorneys.
- Conducted seminar on Negotiation skills for INS attorneys (Houston 1990).
- Prepared FIRST (Blackie's) Administrative search warrant in Northern and Southern District of Ohio.

ASSISTANT COUNTY PROSECUTOR
Civil Division/Criminal Division
Cuyahoga County, Ohio
February 1986 – July 1987
Duties: Provided legal advice and representation for all County Agencies, elected and appointed Officials.
Accomplishments:

- Appointed Delegate – Judicial Conference of the Eighth Judicial District (1987).
- Appointed to the Law Enforcement Coordinating Committee for the Northern District of Ohio, Subcommittee on Child Pornography and Child Sexual Abuse.
- Successfully prosecuted well known attorney and former city official for Grand Theft.

LAW DIRECTOR AND PROSECUTOR
City of North Ridgeville, Ohio
January 1984 to February 1986
Duties: Legal Counsel for the city and city officials; drafted ordinances, departmental contracts and prosecuted municipal violations.
Accomplishments:

- Authored FIRST municipal ordinance in the United States banning the possession of child pornography (January 1985).
- Addressed the United States Attorney General Edwin Meese III's Commission on Pornography, Miami Beach (November 1985).
- Conceived, organized and implemented the nation's first cooperative program with Mothers Against Drunk Driving (MADD) and a judicial branch (Mayor's Court).
- Expanded the City of North Ridgeville Mayor's Court: drafted legislation and instituted procedural guidelines to hear all misdemeanors.
- Established 'Safe Kids Day' which became a semi-annual community program of instructional seminars on child safety, including child identification cards, finger print cards and video prints.
- Developed a Domestic Violence Diversion Program with Genesis House, a women's shelter group. Recognized for "Innovative Programming in Domestic Violence Treatment" (March 1985).

ASSISTANT COUNTY PROSECUTOR
Criminal Division
Cuyahoga County, Ohio
September 1981 to January 1984
Duties: Prosecuted all state criminal violations; advise all county law enforcement agencies.
Accomplishments: Successfully managed extensive criminal docket of over 400 cases/year and over 30 jury trials.

PRIVATE PRACTICE
Cuyahoga/Lorain County, Ohio
May 1981 to July 1987
Duties: General Private legal practice.

ADULT SERVICES COORDINATOR
United Steelworkers of America, District 28
Cleveland, Ohio
April 1981 to July 1981
Duties: Monitored and prepared County Health & Human Services contracts and grants for steelworker retirees.

CONGRESSIONAL AIDE
Congressman Charles A. Vanik, D-Ohio
Washington, DC
September 1980 to January 1981
Duties: Researched and prepared 'interest pieces' such as Iranian Hostage Crisis and Frozen Assets; Campaign Spending/P.A.C. Funding and Voting Trends in the U.S.; and composed legislative correspondence.

OFFICE MANAGER/PURCHASE OF SERVICE
Cuyahoga County Welfare Department
Cleveland, Ohio
September 1975 to September 1980
Duties: Managed disbursement of medical payments to providers, managed staff of 15 employees of the Medical Auditing Department/Review & Audit Service providers with Purchase of Service department.
Accomplishments:

- Identified significant provider overpayments, reorganized payment and eligibility verification procedures.
- Appointed to the Welfare Advisory Board.
- Appointed to Child Welfare Advisory Board

PERSONAL:
(b)(6) [redacted]

PERSONAL ACCOMPLISHMENTS:

- INS Trial Attorney of the Year (1990)
- Who's Who in American Law (1987)

(b)(6) [redacted]

MEMBERSHIP:
American Bar Association (1981 – present)
American Trial Lawyers Association (1992-1993)
American Immigration Lawyers Association (1987-1991)
Federal Bar Association (1987-1991)
Ohio Bar Association (1981 – present)

William A. Cassidy

++QRF Factors:

1.

ABILITY TO DEMONSTRATE THE APPROPRIATE TEMPERMENT TO SERVE AS A BOARD MEMBER.

Throughout my 37-year legal career, I have always prided myself in the fact that every participant in legal matters in which I was involved was treated fairly and with the proper respect and courtesy.

Immigration proceedings are often highly charged. The emotional atmosphere presented demands sensitivity, patience, and the willingness and ability to explain the law in common sense terms to those so personally effected.

I have maintained that Immigration hearings as a non-adversarial search for relief from removal. My guiding principle comes from a quote of Chief Justice Cooke: "Justice must not only be done but be seen to be done."

I have handled some contentious hearings involving high profile Respondents including: Haken Yalincak, a Turkish NYU student and a self-proclaimed financial genius who orchestrated a 7 million dollar hedge fund "Ponzi" scheme. This Respondent attempted to control all aspects of the hearing in an effort to show his disdain for the proceedings and his intellectual superiority. Kelbessa Negewo, an Ethiopian who was a notorious torturer and killer during the period of the Red Terror decided to act as his own attorney and attempted to portray the victims who came forward as common prostitutes. Kelbessa was the first Human Rights abuser deported under the "Leahy Laws". The proceedings involving individuals placed into proceedings after 9-11 also presented unique challenges.

2.

KNOWLEDGE OF IMMIGRATION LAWS AND PROCEEDURES.

As of October 4, 2018, I will have 25 years as an Immigration Judge. I also have five years as an attorney with Legacy INS, including a position as Director of Training. My years with Squires, Sanders and Dempsey focused on Corporate and business immigration matters.

I taught at the F.L.E.T.C. and spoke at various seminars put on by INS, EOIR and sponsored by the private immigration bar.

3.

PROVEN ABLITY TO MANAGE CASES, PREFERABLY IN A HIGH-VOLUME CONTEXT.

From November 2006 to November 2010, I was responsible for the Atlanta detained and non-detained calendar along with the IHP program and the Stewart Detention facility and completed thousands of cases. I was later replaced by the appointment of three Immigration Judges.

Currently, I have completed 2,424 cases for the reporting period of October 1, 2016 to September 28, 2018. The numbers cited does not include hundreds of custody determinations.

4.

EXPERIENCE HANDLING COMPLEX LEGAL ISSUES.

In 25 years, I have adjudicated matters dealing with a variety of complex issues involving asylum, bonds, citizenship and criminal convictions issues.

I was responsible for all the special hearing 9-11 hearings for Atlanta.

I have conducted Top Secret hearings in Atlanta and Detroit in matters involving terrorism issues.

Many of my cases have resulted in BIA, 11th circuit and Supreme Court precedent decisions including but not limited to: *Savory v U.S. Attorney General*, 499 F.3d 1307 (2006); *Barreto-Clara v. Immigration and Naturalization Service*, 276 F.3rd 1334 (11th Circuit 2001); *Immigration and Naturalization Service v. St. Cyr*, 533 US 289 (2001) and *In re Khalifah,* 21 I&N Dec. 107 (Bia 1995) (as Temporary Board Member).

5.

EXPERIENCE CONDUCTING ADMINISTRATIVE HEARINGS, INCLUDING PROVEN ABILITY OR POTENTIAL TO SERVE AS AN EFFECTIVE DECISION MAKER.

I have often sent to troubled courts to assist with docket management and case completions including but not limited to: Honolulu, Detroit, Cleveland, Buffalo, Hartford, El Paso, Lancaster, Dallas, Port Isabel, Guam, and Puerto Rico.

6.

KNOWLEDGE OF JUDCIAL PRACTICES AND PROCEEDURES

During my legal career, I have handled cases before the United States District Court in Cleveland including obtaining the first immigration "Blackies" warrant in that District. I have served as an assistant County Prosecutor in both civil and criminal matters for Cuyahoga County, Ohio and I was a Law Director and Prosecutor for North Ridgeville, Ohio. I can safely state that I handled over 40 criminal jury trials along with additional 10 bench trials. I also set up and managed the Mayor's Court for North Ridgeville.

Moreover, I presented a seminar before the council of Ohio Mayors explaining how to properly set up a Mayor's Court. The training included a discussion of due process, necessary legal safeguards, adherence to recognized procedures, how to create and maintain a proper judicial decorum and how and when to conduct hearings or hold the case over to the Municipal Court.

7.

EXCELLENT ANALYTICAL, DECISION-MAKING, AND WRITING ABILITIES

Many of my rulings were later adopted in other cases which became precedent decisions. While most of my decisions are provided orally at the conclusion of the hearing, the written decision authored in conjunction with my judicial law clerks have been overwhelmingly successful.

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
ATLANTA, GEORGIA

IN THE MATTER OF	)	**IN REMOVAL PROCEEDINGS**
	)	
	)	**File No. A#**
	)	
Respondent	)	
	)	

CHARGE: Section 237(a)(2)(A(iii) of the Act, as amended, in that at any time after admission, Respondent has been convicted of an aggravated felony as defined in section 101(a)(43)(U) of the Act, , a law relating to an attempt or conspiracy to commit an offense described in section 101(a)(43)(G) of the Act.

APPLICATION: Motion to Terminate Withholding of Removal

APPEARANCES

ON BEHALF OF THE RESPONDENT:
Pro Se

ON BEHALF OF THE GOVERNMENT:
Assistant Chief Counsel
Department of Homeland Security
180 Ted Turner Drive SW, Suite 332
Atlanta, Georgia 30303

DECISION AND ORDER OF THE IMMIGRATION JUDGE

I. PROCEDURAL HISTORY

("Respondent") is a male native and citizen of Jamaica. On May 28, 2013, he was ordered removed and granted withholding of removal under section 241(b)(3) of the Act of the Immigration and Nationality Act ("Act" or "INA").

On December 11, 2015, Respondent was convicted in the Superior Court at Gwinnett County, Georgia, for two Counts of Possession with Intent to Distribute in violation of O.C.G.A. section 16-13-30(b).

On March 14, 2018, the Department of Homeland Security ("Department") filed a Motion to Reopen for the purposes of terminating Respondent's withholding of removal alleging Respondent's convictions were particularly serious crimes which were grounds for terminating his relief under 8 C.F.R. section 1208.24(f).

On March 27, 2018, the Court granted the Motion to Reopen for the sole purpose of determining whether Respondent's convictions were particularly serious crimes. See IJ Order (Mar. 27, 2018).

On April 9, 2018, the Department filed a Motion to Terminate Withholding of Removal under INA section 241(B)(3) ("Motion to Terminate").[1]

On April 24, 2018, Respondent filed an Opposition Brief to the Department's Motion to Terminate ("Respondent's Brief.")

The Court has carefully reviewed the entire record before it. All evidence has been considered, even if not specifically discussed further in this decision. For the reasons set forth below, the Court finds that Respondent's convictions are particularly serious crimes and will grant the Department's Motion to Terminate Respondent's withholding of removal.

II. STATEMENT OF LAW AND DISCUSSION

A. Respondent remains removable as charged under section 237(a)(2)(A(iii) of the Act.

In Respondent's brief, he alleges that the NTA is not factual and argues against the charge of removability under 237(a)(2)(A(iii) of the Act. See Respondent's Brief. The Court would first note that Respondent, through counsel, admitted to the factual allegations and conceded the charge of removability at a prior hearing on May 11, 2012. The charge was sustained on the same date. Absent exceptional circumstances not shown here, aliens are bound by their attorney's admissions and concessions. Matter of Velasquez, 19 I&N Dec. 377, 382 (BIA 1986) (no evidence presented to overcome presumption that admissions of fact and concession of deportability were a reasonable tactical decision). Furthermore, the recent Supreme Court case Respondent mentions in his brief, Sessions v. Dimaya, 584 U.S. ___ (2018), found that crimes of violence under 18 U.S.C. section 16(b), which are used for aggravated felonies under section 101(a)(43)(F) of the Act, are void for vagueness. Respondent's charge of removability addresses aggravated felonies under 101(a)(43)(U) and (G). Therefore, Dimaya does not apply to his case. As a result, Respondent's charge remains sustained.

B. Respondent convictions under O.C.G.A. section 16-13-30(b) are aggravated felonies.

In assessing whether a respondent's conviction constitutes an aggravated felony, the Court employs the categorical approach. Matter of Chairez, 26 I&N Dec. 819 (BIA 2016). Under the categorical approach, the Court must determine whether the elements of the crime of conviction match the elements of the generic offense. *E.g.*, Mathis v. United States, 136 S. Ct. 2243, 2248 (2016); Descamps v. United States, 133 S. Ct. 2276, 2283 (2013); Moncrieffe v. Holder, 133 S. Ct. 1678, 1684 (2013); Spaho v. U.S. Atty. Gen., 837 F.3d 1172, 1177 (11th Cir. 2016); Donawa v. U.S. Atty. Gen., 735 F.3d 1275, 1280 (11th Cir. 2013); Chairez, 26 I&N Dec. at 819-20. A state statute categorically matches the generic offense where the state crime "necessarily involved facts

[1] Prior to the Motion to Terminate, proceedings were held at the Krome Immigration Court. As Respondent was subsequently detained, a Motion to Change Venue was filed and granted, and jurisdiction was found proper with the Atlanta Immigration Court.

equating to the generic federal offense." Moncrieffe, 133 S. Ct. at 1684. The Court "must presume that the conviction rested upon nothing more than the least of the acts criminalized, and then determine whether even those acts are encompassed by the generic federal offense." Id. (internal quotation marks and alterations omitted). As such, the Court views the statutory elements in the abstract instead of relying on the facts of the particular case. Id. The elements of an offense are the "constituent parts of a crime's legal definition"—what the jury must find beyond a reasonable doubt or what a defendant necessarily admits when pleading guilty—while facts "need neither be found by a jury nor admitted by a defendant." Mathis, 136 S. Ct. at 2248 (internal quotation marks omitted). Where a statute "covers any more conduct than the generic offense," it is not a categorical match. Id. However, "there must be a realistic probability, not a theoretical possibility, that the State would apply its statute to conduct that falls outside the generic definition of a crime." Moncrieffe, 133 S. Ct. at 1685 (internal quotation marks omitted) (quoting Gonzales v. Duenas-Alvarez, 549 U.S. 183, 193 (2007)); see Matter of Ferreira, 26 I&N Dec. 415 (BIA 2014). But see Ramos v. U.S. Atty. Gen., 709 F.3d 1066, 1071-72 (11th Cir. 2013) ("Duenas-Alvarez does not require this showing when the statutory language itself, rather than 'the application of legal imagination' to that language, creates the 'realistic probability' that a state would apply the statute to conduct beyond the generic definition.").

If the statute is "divisible," the Court applies the "modified categorical approach." Mathis, 136 S. Ct. at 2249; Descamps, 133 S. Ct. at 2281, 2283; see Chairez, 26 I&N Dec. at 822-24. A statute is divisible if it "sets out one or more elements of the offense in the alternative" and not all of the alternatives meet the generic federal definition. Descamps, 133 S. Ct. at 2281. Under the modified categorical approach, the Court may examine the record of conviction, which includes the charging document, plea, verdict or judgment, sentence, and comparable judicial records. Id. at 2284-85; Shepard v. United States, 544 U.S. 13, 26 (2005). This examination allows the Court "to determine what crime, with what elements, a [respondent] was convicted of." Mathis, 136 S. Ct. at 2249. The Court then compares that particular crime to the generic offense. Id.

Section 101(a)(43)(B) of the Act defines an aggravated felony as "illicit trafficking in a controlled substance (as defined in section 102 of the Controlled Substances Act), including a drug trafficking crime (as defined in section 924(c) of title 18, U.S. Code)." First, under 18 U.S.C. section 924(c)(2), a drug trafficking crime is defined as any felony punishable under the Controlled Substance Act ("CSA") (21 USC § 801 et seq.), the Controlled Substances Import and Export Act (21 USC § 951 et seq.) or chapter 705 of title 46. A state offense constitutes a felony punishable under the CSA only if it proscribes conduct punishable as a felony under the federal law. Lopez v. Gonzales, 549 U.S. 47, 60 (2006). A drug offense is a "felony" under the CSA if it is punishable by a term of imprisonment of more than one (1) year. 21 U.S.C. § 802(13), (44); see also Lopez, 549 U.S. at 56 n.7.

Respondent was convicted under O.C.G.A. section 16-13-30(b) which states: "It is unlawful for any person to manufacture, deliver, distribute, dispense, administer, sell, or possess with intent to distribute any controlled substance." The Department argues that the portion of the state statue of which Respondent was convicted would be punishable by the CSA, specifically under 21 U.S.C. section 841(a)(1). The Court agrees that Respondent's conviction is a felony as described under the named statute. That federal offense states in relevant part: "it shall be unlawful for any person knowingly or intentionally—(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance[.]" 21 U.S.C. § 841(a)(1).

Although the Georgia statute facially appears to be broader that 21 USC section 841(a)(1), all the ways of violating the Georgia the statute (excluding as discussed in this decision, the actual controlled substance), appear to be encompassed in the federal statute through their definitions. *Compare* O.C.G.A. § 16-13-30(b) ("manufacture, deliver, distribute, dispense, administer, sell, or possess with intent to distribute...") *with* 21 U.S.C. § 841(a)(1) ("manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense...")

As to "manufacturing," both statutes have identical definitions. *Compare* O.C.G.A. § 16-13-21(15) *with* 21 U.S.C. §§ 802(15). The term "distribute" under federal law means to "deliver," (other than by administering or dispensing) and "deliver: means "the actual, constructive, or attempted transfer of a controlled substance." See 21 U.S.C. §§ 802 (8) and (11). Georgia defines both terms the same. O.C.G.A. §§ 16-13-21(11) and (7). In Georgia, "sell" means "to transfer property, actually or constructively, for consideration either in money or its equivalent." Georgia Suggested Pattern Jury Instructions - Criminal § 2.70.10 (2016). In an unpublished opinion, the Board found that a violation under O.C.G.A. section 16-13-30(b) for "sale" of cocaine was a drug trafficking aggravated felony as it was analogous to 21 U.S.C. section 841(a)(1) as "distribution a" controlled substance. Marta Lucia Gomez-Palacios, A094-571-216 (BIA April 11, 2014) (unpublished) (cited for persuasiveness).

The term "dispense" under federal law means: "to deliver a controlled substance to an ultimate user or research subject by, or pursuant to the lawful order of, a practitioner, including the prescribing and administering of a controlled substance and the packaging, labeling or compounding necessary to prepare the substance for such delivery." 21 U.S.C. § 802 (10). The Georgia statute has the same definition. O.C.G.A. § 16-13-21(9). The term "dispense" under the federal law also encompasses administering a controlled substance. As indicated above, 21 U.S.C. section 802(10), as it defines the word "dispense," states that dispensing means to deliver a controlled substance, "which includes the prescribing and *administering* of a controlled substance." U.S. v. Bartee, 479 F.2d 484, 487-488 (10th Cir. 1973) *implied overrule on other grounds*, U.S. v. Nelson, 383 F.3d 1227 (10th Cir. 2004) (emphasis added) (internal quotations omitted). "Administer" under the federal law refers to the direct application of a controlled substance to the body of a patient or research subject by: (A) a practitioner (or, in his presence, by his authorized agent), or (B) the patient or research subject a the direction and in the presence of the practitioner, whether such application be by injection, inhalation, ingestion, or any other means." 21 U.S.C. § 802(2). Georgia defines "administer" in the same manner. See O.C.G.A. 16-13-21(1).

Both federal law and Georgia define possession as the same: knowing exercise of, or knowing power or right to exercise, dominion and control over the controlled substance. *Compare* U.S. v. Smith, 962 F.2d 923, 929 (9th Cir. 1992); U.S. v. Collazo, 732 F.2d 1200, 1205 (4th Cir. 1984) *with* Widener v. State, 529 S.E.2d 899, 900 (Ga. Ct. App. 2000). Georgia defines "intent to distribute" as intent to unlawfully deliver or sell. See Georgia Suggested Pattern Jury Instructions - Criminal § 2.70.10 (2016).

As a result, the only reason in which O.C.G.A. section 16-13-30(b) is not categorically a "drug tracking crime" is because Georgia's broader controlled substance list.

In the alternative, if the statute is broader than the federal statute, the Court finds that the statute is divisible as it creates alternative means of committing the offense. The suggested jury

instructions for the charge provide for the identification of the specific alternative crime (i.e., manufacture, sell, deliver, possess with intent to distribute, distribute, administer, or dispense.) See Georgia Suggested Pattern Jury Instructions - Criminal § 2.70.10 (2016). Thus, it is evident that the standard practice is for the specific alternative element as to how the statute was violated is an issue in a charge under O.C.G.A. § 16-13-30(b) to be identified and found by a jury. Estrella, 758 F.3d at 1246 (stating that a statute is divisible if the jurors determining whether a defendant charged with violating that statute would *typically* be required to agree that their decision to convict is based on one of the alternative elements); Donawa, 735 F.3d at 1281.

Under the modified categorical approach, looking at Respondent's conviction documents, the Court notes that Respondent was convicted of possession with intent to distribute. See Motion to Terminate, Tab C. Under federal law, the crime of possession with intent to distribute has three essential elements under federal law: government must prove beyond doubt that defendant (1) knowingly, (2) possessed, (3) with intent to distribute the controlled substance. U.S. v. Innie, 7 F.3d 840, 844 (9th Cir. 1993), *cert. denied* 114 S.Ct. 1567; U.S. v. Sanchez, 961 F.2d 1169, 1175 (5th Cir. 1992) *cert. denied* 113 S.Ct. 330, 506 U.S. 918. Under Georgia law, the elements of possession with intent to distribute are (1) possession of a controlled substance and (2) the intent to distribute it. Calloway v. State, 810 S.E.2d 105, 113 (Ga. 2018). In the lesser included offense, O.C.G.A. section 16-13-30(a), possession of a controlled substance conviction requires the defendant to have knowledge of the chemical identity of the substance possessed. Duvall v. State, 712 S.E.2d 850 (Ga. 2011) (knowledge of the chemical identity is an element of O.C.G.A. section 16-13-30(a)); Calloway v. State 810 S.E.2d at 113 (possession is a lesser included crime of possession with intent to distribute.) Therefore, the Court finds that Respondent's conviction requires knowledge same as 21 U.S.C. section 841.

Nonetheless, the statute is still not categorically a trafficking crime as it criminalizes substances which the Federal Court does not. *Compare* O.C.G.A. § 16-13-21 (defining "controlled substance" under Georgia law), *and* O.C.G.A. §§ 16-13-25 – 16-13-29 (listing substances controlled under Georgia law), *with* 21 U.S.C. § 802(6) (defining "controlled substance" under Federal law), *and* 21 U.S.C. § 812 (listing substances controlled under Federal law). Moreover, the Court finds that because the substances which are controlled under Georgia law – but not controlled under Federal law – are specifically listed in the language of the statue, the statute's own language creates a "realistic probability" that it will punish crimes that do not qualify as "relating to a controlled substance" under the Federal law. See Ramos v. U.S. Atty. Gen., 709 F.3d 1066, 1071-72 (11th Cir. 2013). Thus, the Court finds Respondent's conviction under O.C.G.A. section 16-13-30(b) is not categorically a drug trafficking aggravated felony.

However, the Court finds that O.C.G.A. section 16-13-30(b) is a divisible statute under the framework laid out by the Supreme Court and the Eleventh Circuit. First, the Court notes that the controlled substances which could result in a conviction are laid out in the alternative. See O.C.G.A. §§ 16-13-25 – 16-13-29; 21 C.F.R. Part 1308; see also Descamps, 133 S.Ct. at 2281-82; United States v. Howard, 742 F.3d 1334, 1345-46 (11th Cir. 2104). The lists of the controlled substances in O.C.G.A. sections 16-13-25 – 16-13-29 and 21 C.F.R. Part 1308 are exhaustive, and not merely examples of substances which a court could determine meet a broader definition of a "controlled substance." See O.C.G.A. §§ 16-13-25 – 16-13-29; 21 C.F.R. Part 1308; see also Howard, 742 F.3d at 1348 ("In light of the Descamps decision, illustrative examples are not alternative elements."). Furthermore, the suggested jury instructions for a charge provide for the

controlled substance at issue be identified in the charge. See Georgia Suggested Pattern Jury Instructions - Criminal § 2.70.10 (2016). Thus, it is evident that the standard practice is for the specific alternative element as to how the statute was violated in a charge under O.C.G.A. section 16-13-30(b) to be identified and found by a jury. Estrella, 758 F.3d at 1246 (stating that a statute is divisible if the jurors determining whether a defendant charged with violating that statute would *typically* be required to agree that their decision to convict is based on one of the alternative elements); Donawa, 735 F.3d at 1281.

Under the modified categorical approach, looking at Respondent's conviction documents, the Court notes that Respondent was convicted of possession with intent to distribute methamphetamine and heroin. See Motion to Terminate, Tab C. Methamphetamine and heroin are controlled substances under both federal and Georgia law. See 21 U.S.C. § 812; O.C.G.A. §§ 16-13-25 (Schedule I) - 16-13-26 (Schedule II). Thus, the Court is satisfied that Respondent's convictions under section O.C.G.A. section 16-13-30(b) is sufficiently analogous to the federal felony offense of 21 U.S.C. section 841(a)(1), such that the offense proscribes conduct publishable as a felony under that federal law. See also 21 U.S.C. § 812 (methamphetamine and heroin are a controlled substances under the CSA); 21 U.S.C. § 841(b)(1)(C) (the offense carries a maximum term of imprisonment exceeding one year).

Therefore, Respondent's convictions qualify as aggravated felonies as denied in section 101(a)(43)(B) of the Act.

C. The Department's Motion to Terminate Respondent's Withholding of Removal is Granted as Respondent's convictions constitute particularly serious crimes.

Respondent's possession with intent to deliver convictions constitute particularly serious crimes. The offenses are drug trafficking aggravated felonies and therefore are found to be particularly serious crimes. Matter of Y-L, A-G-, & R-S-R-, 23 I&N Dec. 270 (BIA 2002) (finding that aggravated felony trafficking which is presumptively a particularly serious crime and grounds for denial even if the sentence is less than five years.) Furthermore, if an alien is convicted of an aggravated felony and sentenced to at least five years in prison, he is "*automatically* deemed to have committed a 'particularly serious crime.'" Matter of Y-L-, 23 I&N Dec. 270, 273 (A.G. 2002) (emphasis in original); see also United States v. Maung, 320 F.3d 1305, 1308 (11th Cir. 2003); Matter of N-A-M-, 24 I&N Dec. 336 (BIA 2007). Respondent's convictions are aggravated felonies and he was sentenced to ten (10) years confinement, to be served as two (2) years work release and the remainder probated. See Motion to Terminate, Tab C.[2]

[2] As defined in the Act, a "term of imprisonment" is "deemed to include the period of incarceration or confinement ordered by a court of law, regardless of any suspension of the imposition or execution of that imprisonment or sentence in whole or in part." INA § 101(a)(48)(B). The Eleventh Circuit has held that "[w]hen a court does not order a period of incarceration and then suspend it, but instead imposes probation directly, the conviction is not an 'aggravated felony.'" United States v. Guzman-Bera, 216 F.3d 1019, 1021 (11th Cir. 2000) (citing United States v. Banda-Zamora, 178 F.3d 728, 730 (5th Cir.1999)). However, the Eleventh Circuit clearly distinguished where a term of imprisonment includes all parts of the sentence of imprisonment form which the sentencing court excuses the defendant, even if the state law describes the excused portion of the sentence with a term other than suspend. See United States v. Ayala-Gomez, 255 F.3d 1314, 1319 (11th Cir. 2001); see also Botes v. U.S. Atty Gen., 436 Fed App. 932, 934 (11th Cir. 2011); see also United States v. Garza-Mendez, 735 F.3d 1284, 1289 (11th Cir. 2013) (internal quotations and citations omitted). The Court held that under the Georgia sentencing scheme, the term imprisonment included the portion of the sentenced probated. United States v. Garza-Mendez, 735 F.3d 1284 at 1289. Respondent's Judgement states that

Under 8 C.F.R. section 1208.24(f), the Court may terminate withholding of removal if the Department establishes the alien committed an act that would have been grounds for denial had it occurred before he or she was granted relief. 8 C.F.R. § 1208.24(c), (f). Respondent's particularly serious crimes would have rendered him ineligible for withholding under the Act had he committed them before he was granted the relief. 8 C.F.R. § 1208.17. Therefore, the Court will terminate Respondent's grant of withholding under the Act. 8 C.F.R. § 1208.24(f).[3]

III. CONCLUSION

In summary, the Court finds Respondent's convictions are particularly serious crimes. As they would have rendered him ineligible for withholding if committed before the relief was granted, the Court will grant the Department's Motion to Terminate Respondent's withholding of removal. As Respondent may still be eligible for deferral under the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman, or Degrading Treatment or Punishment pursuant to 8 C.F.R. section 1208.17, the Court will set a hearing for an individual date to hear the merits of the case. In light of the foregoing, the Court will enter the following orders:

ORDERS OF THE IMMIGRATION JUDGE

It is ordered that: The Department's Motion to Terminate Withholding of Removal is **GRANTED**.

It is further ordered that: Respondent's Withholding of Removal under section 241(b)(3) of the Act is **TERMINATED**.

_____
Date

_____
William A. Cassidy
United States Immigration Judge
Atlanta, Georgia

"the Court sentences the defendant to confinement in such intuition as the Commissioner of the State Department of Corrections may direct, with the period of confinement to be computed as provided by laws[,]" and that he was sentenced to "10 years to serve the first 2 years in work releases, balance probated." See Motion to Terminate, Tab C.

[3] The Court has no jurisdiction over the Department's detainers and when they are issued.

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U.S. Department of Justice

Executive Office for Immigration Review

Office of the Director

5107 Leesburg Pike, Suite 2600
Falls Church, Virginia 22041

Director

July 18, 2019

MEMORANDUM FOR THE ATTORNEY GENERAL

THROUGH: THE DEPUTY ATTORNEY GENERAL PAT f. JAR 8.1.19

FROM: James R. McHenry III
Director JRM for JRM

SUBJECT: Candidate for an Appellate Immigration Judge Position

PURPOSE: To refer to the Attorney General for his consideration the paperwork to appoint a current immigration judge (IJ) that is a candidate to an open appellate immigration judge (AIJ) position located at the Atlanta Immigration Court (IC).

TIMETABLE: At the Attorney General's earliest convenience.

DISCUSSION: The Board of Immigration Appeals (BIA) is the Executive Office for Immigration Review's (EOIR) appellate component, having nationwide jurisdiction to hear appeals from decisions rendered by IJs and certain decisions by district directors of the Department of Homeland Security. By regulation the BIA has 21 AIJs. It currently has 15 AIJs and six vacancies.

In accordance with the AIJ (also known as Board Member) hiring procedures established on March 8, 2019, a three-member Finalist Panel (Panel) recently convened to evaluate the candidates recommended by EOIR to fill a current Board Member vacancy.

EOIR recommended multiple candidates to the Panel for the vacancy. The Panel reviewed the applicants' written materials and summaries of their interviews conducted by EOIR. The Panel then conducted its own interviews of the candidates for the vacancy. Finally, the Panel discussed the merits of the candidates and agreed to recommend the below listed individual for a vacancy.

The EOIR Director then consulted with the Office of the Deputy Attorney General and the Office of the Attorney General about each recommended candidate. Following these procedures and per the authority delegated by the Attorney General, the EOIR Director determined that IJ William A. Cassidy should be appointed for an AIJ position to be located at the Atlanta IC. Notwithstanding the delegation of authority to the EOIR Director, the Attorney General retains discretion over the final selection and appointment of candidates.[1]

On October 3, 1993, William A. Cassidy entered on duty as an IJ after being appointed by then Attorney General Janet W. Reno. He served initially in the New York City IC before transferring to the Atlanta IC in 1995. During Judge Cassidy's time as an IJ, he has performed in an exemplary manner. Over the course of his career as an IJ, he has managed numerous cases involving high-profile respondents and novel issues of law and has addressed cases in an efficient manner consistent with due process. The candidate has a completed and favorably adjudicated background, and there is no derogatory information that would preclude him from being appointed as the nineteenth AIJ on the BIA, filling a new position established in February 2018. A copy of the candidate's application file is immediately available upon your request.

Judge Cassidy presents as an excellent candidate for an AIJ position and one who is eminently qualified for the position. He possesses approximately 32 years of experience in immigration law and has served as an IJ for over 25 years. Judge Cassidy also previously served as a temporary AIJ, including on a panel with Paul Schmidt and Fred Vacca that issued the precedential decision, *Matter of Khalifah*, 21 I&N Dec. 107 (BIA 1995), regarding the detention of aliens subject to criminal proceedings for alleged terrorist activities. He has an exceptional background of immigration knowledge which, combined with his experience as an IJ and a former temporary AIJ, will make him a strong addition to the BIA. Judge Cassidy's application materials denote a candidate well-qualified to serve as an AIJ.

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[1] Previously, if a current IJ was recommended to become a Board Member, per Departmental guidance it was EOIR practice to put forth first a temporary appointment order establishing a new probationary period, followed by a permanent order upon successful completion of the probationary period. While this remains the practice for non-IJ candidates, for sitting IJs, the Office of Legal Counsel has advised, and the Office of the Deputy Attorney General has concurred, that an incumbent IJ converting to an AIJ position requires the same or similar skills and, therefore, should not be placed on a new not-to-exceeds appointment. Therefore, this candidate, having completed his probationary period as an IJ, will be placed on a permanent appointment.

From 1992 to 1993, Judge Cassidy served as of counsel, with the law firm of Squire, Sanders, and Dempsey. In this role he advised corporations on matters involving immigration issues. Prior to private practice, Judge Cassidy worked for the Department of Justice, Immigration and Naturalization Service, first as a general attorney from 1987 to 1991, then as assistant general counsel, director of Training from 1991 to 1992. In these roles Judge Cassidy advised attorneys and operating units regarding immigration law, and developed curricula regarding immigration issues for attorney training conferences.

Prior to his federal service, Judge Cassidy served in a variety of roles in the State of Ohio, serving as assistant county prosecutor, Civil and Criminal Divisions, Cuyahoga County, from 1986 to 1987; law director and prosecutor, City of North Ridgeville, from 1984 to 1986; and assistant county prosecutor, Criminal Division, Cuyahoga County, from 1981 to 1984. He also worked in the private practice sector in Ohio from 1981 to 1987.

Judge Cassidy holds a Bachelor of Arts degree from Kenyon College, Gambier, Ohio, and a Juris Doctor from Cleveland Marshall College of Law, Cleveland, Ohio.

Judge Cassidy's current federal service was vetted and no negative information that would preclude his appointment as an AIJ was reported.

Judge Cassidy's selection for this AIJ position was made in accordance with the IJ hiring procedures approved by the Attorney General.

An Attorney General Order, appointing William A. Cassidy as an AIJ, is attached hereto for signature.

RECOMMENDATION: That the Attorney General sign the attached order.

APPROVE: _____
Date: August 14, 2019

Concurring components:

OLC _____ 7-30-19

DISAPPROVE: _____

Nonconcurring components:

None

OTHER: _____

Attachment

Office of the Attorney General
Washington, D. C. 20530

ORDER NO. 4508-2019

APPOINTING WILLIAM A. CASSIDY AS AN APPELLATE IMMIGRATION JUDGE

By the authority vested in me as the Attorney General by 8 U.S.C. § 1103(g)(1), I hereby appoint William A. Cassidy as an Appellate Immigration Judge.

This order shall be effective on the first day of the pay period in which the oath of office is taken.

8/14/2019
Date

William P. Barr
Attorney General